

William A. Kershaw (State Bar No. 057486)  
Stuart C. Talley (State Bar No. 180374)  
Ian J. Barlow (State Bar No. 262213)  
Jamie M. Powers (State Bar No. 329439)  
**KERSHAW, COOK & TALLEY PC**  
401 Watt Avenue  
Sacramento, California 95864  
Telephone: (916) 779-7000  
Facsimile: (916) 721-2501  
Email: [bill@kctlegal.com](mailto:bill@kctlegal.com)  
Email: [stuart@kctlegal.com](mailto:stuart@kctlegal.com)  
Email: [ian@kctlegal.com](mailto:ian@kctlegal.com)  
Email: [jamie@kctlegal.com](mailto:jamie@kctlegal.com)

*Attorneys for Plaintiff and the Putative Class*

Martin D. Bern (State Bar No. 153203)  
Jordan D. Segall (State Bar No. 281102)  
**MUNGER, TOLLES & OLSON LLP**  
350 South Grand Avenue, 50th Floor  
Los Angeles, California 90071-3426  
Telephone: (213) 683-9100  
Facsimile: (213) 687-3702  
Email: [martin.bern@mto.com](mailto:martin.bern@mto.com)  
Email: [jordan.segall@mto.com](mailto:jordan.segall@mto.com)

*Attorneys for Defendant*

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

MICHAEL HARR TRUEBLOOD as an  
individual and on behalf of all others  
similarly situated,

Plaintiff,

v.

CASCADE WINDOWS, a Delaware  
Corporation, and DOES 1 through 100,  
inclusive,

Defendants.

Case No.: 2:21 -cv-01637-KJM-CKD

**~~PROPOSED~~ STIPULATED  
PROTECTIVE ORDER**

The Honorable Kimberly J. Mueller  
Courtroom 3

1     **1. PURPOSES AND LIMITATIONS**

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public disclosure  
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
5 the Parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
6 Order. The Parties acknowledge that this Order does not confer blanket protections on all  
7 disclosures or responses to discovery and that the protection it affords from public disclosure and  
8 use extends only to the limited information or items that are entitled to confidential treatment under  
9 the applicable legal principles. The Parties further acknowledge, as set forth below, that this  
10 Stipulated Protective Order does not entitle them to file confidential information under seal; Local  
11 Rule 141 sets forth the procedures that must be followed and the standards that will be applied  
12 when a party seeks permission from the court to file material under seal.

13     **2. DEFINITIONS**

14           2.1     Challenging Party: a party or non-party that challenges the designation of  
15 information or items under this Order.

16           2.2     “CONFIDENTIAL” Information or Items: information (regardless of how it is  
17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
18 of Civil Procedure 26(c).

19           2.3     Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
20 as their support staff).

21           2.4     Designating Party: a Party or Non-Party that designates information or items that it  
22 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

23           2.5     Disclosure or Discovery Material: all items or information, regardless of the  
24 medium or manner in which it is generated, stored, or maintained (including, among other things,  
25 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
26 responses to discovery in this matter.

27           2.6     Expert: a person with specialized knowledge or experience in a matter pertinent to  
28 the litigation who has been retained by a party or its counsel to serve as an expert witness or as a

consultant in this action.

2.7 House Counsel: attorneys who are employees of a Party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys who are not employees of a Party to this action but are retained to represent or advise a Party to this action and have appeared in this action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

2.10 Party: any Party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.12 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.13 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record

1 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
2 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
3 information lawfully and under no obligation of confidentiality to the Designating Party. Any use  
4 of Protected Material at trial shall be governed by a separate agreement or order.

5 **4. DURATION**

6 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
7 Stipulated Protective Order shall remain in effect until a Designating Party agrees in writing to  
8 remove the “Confidential” designation or a court order otherwise directs the removal of the  
9 “Confidential” designation and all proceedings or interlocutory appeals challenging such an order  
10 have been concluded. Final disposition shall be deemed to be the later of (1) dismissal of all claims  
11 and defenses in this action, with or without prejudice; and (2) final judgment herein after the  
12 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
13 including the time limits for filing any motions or applications for extension of time pursuant to  
14 applicable law.

15 **5. DESIGNATING PROTECTED MATERIAL**

16 5.1 Exercise of Restraint and Care in Designating Material for Protection. The  
17 Designating Party shall only designate as “Confidential” any Disclosure or Discovery Material that  
18 the Designating Party, believes, in good faith, contains Confidential Information or Items, as  
19 defined above. Each Party that designates information or items for protection under this Order must  
20 take care to limit any such designation to specific material that qualifies under the appropriate  
21 standards. The Designating Party must designate for protection only those parts of material,  
22 documents, items, or oral or written communications that qualify – so that other portions of the  
23 material, documents, items, or communications for which protection is not warranted are not swept  
24 unjustifiably within the ambit of this Stipulated Protective Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown  
26 to be clearly unjustified, made in bad faith or for improper purpose (e.g., to unnecessarily encumber  
27 or retard the case development process or to impose unnecessary expenses and burdens on other  
28 parties) expose the Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it designated for  
2 protection do not qualify for protection, that Designating Party must promptly notify all other  
3 Parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order or  
5 as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
6 under this Order must be clearly so designated before the material is disclosed or produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (e.g., paper or electronic documents, but  
9 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
10 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion  
11 or portions of the material on a page qualifies for protection, the Producing Party also must clearly  
12 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must  
13 specify, for each portion, the level of protection being asserted.

14 A Party or Non-Party that makes original documents or materials available for inspection  
15 need not designate them for protection until after the inspecting Party has indicated which material  
16 it would like copied and produced. During the inspection and before the designation, all of the  
17 material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting  
18 Party has identified the documents it wants copied and produced, the Producing Party must  
19 determine which documents, or portions thereof, qualify for protection under this Order. Then,  
20 before producing the specified documents, the Producing Party must affix the appropriate legend  
21 ("CONFIDENTIAL") to each page that contains Protected Material. If only a portion or portions  
22 of the material on a page qualifies for protection, the Producing Party also must clearly identify the  
23 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
24 each portion, the level of protection being asserted.

25 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
26 Designating Party identify on the record, before the close of the deposition, hearing, or other  
27 proceeding, all protected testimony and specify the level of protection being asserted.

28 (c) for information produced in some form other than documentary and for any other

1 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
 2 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a  
 3 portion or portions of the information or item warrant protection, the Producing Party, to the extent  
 4 practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 6 designate qualified information or items does not, standing alone, waive the Designating Party’s  
 7 right to secure protection under this Order for such material. Upon timely correction of a  
 8 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
 9 in accordance with the provisions of this Order.

10 5.4 Use of Confidential Information or Items in Open Court. The use by the Receiving  
 11 Party of Confidential Information or Items in open Court in this case shall not constitute a violation  
 12 of this Stipulated Protective Order, and the use by either Party of Confidential Information or Items  
 13 in open Court in this case shall not constitute a waiver of confidentiality or other privileges in the  
 14 materials used.

15 5.5 Other Privileges. The entry of this Stipulated Protective Order does not alter, waive,  
 16 modify, or abridge any right, privilege, or protection otherwise available to any Party with respect  
 17 to the discovery of matters, including but not limited to any Party’s right to assert the attorney-  
 18 client privilege, the attorney work product doctrine, or other privileges, or any Party’s right to  
 19 contest any such assertion.

## 20 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
 22 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
 23 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 24 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
 25 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 26 original designation is disclosed.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
 28 by providing written notice of each designation it is challenging and describing the basis for each

1 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
2 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
3 of the Protective Order. If the Designating Party provides a written response to the Challenging  
4 Party's notice, any such written response shall be provided within 7 days. The Parties shall attempt  
5 to resolve each challenge in good faith and must begin the process by conferring directly (in voice-  
6 to-voice dialogue; other forms of communication are not sufficient) within 14 days of the date of  
7 service of notice. In conferring, the Challenging Party must explain the basis for its belief that the  
8 confidentiality designation was not proper and must give the Designating Party an opportunity to  
9 review the designated material, to reconsider the circumstances, and, if no change in designation is  
10 offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the  
11 next stage of the challenge process only if it has engaged in this meet and confer process first or  
12 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
13 a timely manner.

14       6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
15 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
16 Local Rule 251 (and in compliance with Local Rule 141, if applicable) within 21 days of the initial  
17 notice of challenge or within 14 days of the parties agreeing that the meet and confer process will  
18 not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
19 competent declaration affirming that the movant has complied with the meet and confer  
20 requirements described in the preceding paragraph. Failure by the Designating Party to make such  
21 a motion including the required declaration after exhaustion of the meet and confer process and  
22 within the timelines set forth in this paragraph shall automatically waive the confidentiality  
23 designation for each challenged designation. However, the Parties may meet and confer to agree  
24 on a later, mutually acceptable date of filing the motion. In addition, the Challenging Party may  
25 file a motion challenging a confidentiality designation at any time if there is good cause for doing  
26 so, including a challenge to the designation of a deposition transcript or any portions thereof. Any  
27 motion brought pursuant to this provision must be accompanied by a competent declaration  
28 affirming that the movant has complied with the meet and confer requirements imposed by the

1 preceding paragraph.

2 The burden of persuasion in any such challenge proceeding shall be on the Designating  
3 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
4 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.  
5 Unless the Designating Party has waived the confidentiality designation by failing to file a motion  
6 to retain confidentiality as described above, all parties shall continue to afford the material in  
7 question the level of protection to which it is entitled under the Producing Party's designation until  
8 the court rules on the challenge.

9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
11 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
12 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
13 the categories of persons and under the conditions described in this Order. When the litigation has  
14 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
15 DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a location and in  
17 a secure manner that ensures that access is limited to the persons authorized under this Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
19 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
20 information or item designated "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees  
22 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
23 for this litigation and who have signed the "Acknowledgement and Agreement to Be Bound"  
24 (Exhibit A);

25 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
26 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (c) Experts (as defined in this Order) of the Receiving Party, and their professional staff,



1 to whom disclosure is reasonably necessary for this litigation and who have signed the  
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

4 (e) court reporters, videographers, and their staff, professional jury or trial consultants,  
5 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who  
6 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
8 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
9 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
10 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
11 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
12 Stipulated Protective Order;

13 (g) the author or recipient of a document containing the information or a custodian or  
14 other person who otherwise possessed or knew the information;

15 (h) mediators or settlement officers, and their supporting personnel, mutually agreed  
16 upon by any of the Parties engaged in settlement discussions; and

17 (i) Any other person as to whom the Designating Party has consented to disclosure.

18 Nothing in this Order limits the testimony of Parties or Non-Parties, or the use of certain  
19 documents, at any court hearing or trial—such determinations will only be made by the court at the  
20 hearing or trial, or upon an appropriate motion.

21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
22 **OTHER LITIGATION**

23 If a Party is served with a subpoena or a court order issued in other litigation that compels  
24 disclosure of any information or items designated in this action as “CONFIDENTIAL” that Party  
25 must:

26 (a) promptly notify in writing the Designating Party. Such notification shall include a  
27 copy of the subpoena or court order;

28 (b) promptly notify in writing the party who caused the subpoena or order to issue in

1 the other litigation that some or all of the material covered by the subpoena or order is subject to  
2 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
4 Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with the subpoena  
6 or court order shall not produce any information designated in this action as “CONFIDENTIAL”  
7 before a determination by the court from which the subpoena or order issued, unless the Party has  
8 obtained the Designating Party’s permission. The Designating Party shall bear the burden and  
9 expense of seeking protection in that court of its confidential material – and nothing in these  
10 provisions should be construed as authorizing or encouraging a Receiving Party in this action to  
11 disobey a lawful directive from another court.

12 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
13 **THIS LITIGATION**

14 (a) The terms of this Order are applicable to information produced by a Non-Party in  
15 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in  
16 connection with this litigation is protected by the remedies and relief provided by this Order.  
17 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional  
18 protections.

19 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
20 Party’s confidential information in its possession, and the Party is subject to an agreement with the  
21 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

22 (1) promptly notify in writing the Requesting Party and the Non-Party that some  
23 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

24 (2) promptly provide the Non-Party with a copy of the Stipulated Protective  
25 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of  
26 the information requested; and

27 (3) make the information requested available for inspection by the Non-Party.

28 (c) If the Non-Party fails to object or seek a protective order from this court within 14

1 days of receiving the notice and accompanying information, the Receiving Party may produce the  
2 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely  
3 seeks a protective order, the Receiving Party shall not produce any information in its possession or  
4 control that is subject to the confidentiality agreement with the Non-Party before a determination  
5 by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
6 of seeking protection in this court of its Protected Material.

7 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
9 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,  
10 the Receiving Party must immediately (a) notify in writing the Designating Party of the  
11 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected  
12 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
13 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and  
14 Agreement to Be Bound" that is attached hereto as Exhibit A.

15 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
16 **PROTECTED MATERIAL**

17 11.1 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
18 produced material is subject to a claim of privilege or other protection, the obligations of the  
19 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
20 is not intended to modify whatever procedure may be established in an e-discovery order that  
21 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)  
22 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or  
23 information covered by the attorney-client privilege or work product protection, the parties may  
24 incorporate their agreement in the stipulated protective order submitted to the court.

25 11.2 Attorney-client privileged communications and attorney work product that post-date  
26 the service of Plaintiffs' complaint need not be placed on a privilege log. Any other documents,  
27 ESI or communications that are withheld and subject to an assertion of privilege shall be identified  
28 on a privilege log by the following categories to assist the court in ruling on the claim of privilege

as to each item of information or each document or ESI withheld: (a) description of the document, communication or ESI withheld; (b) persons present or participating in the communication, or author(s) and recipient(s) of the withheld document, ESI or communication (for email, this shall include to, from, cc and bcc); (c) beginning and ending bates numbers; (d) date of the communication, document or ESI withheld; (e) subject matter of the withheld communication, document or ESI; (g) type of document or ESI withheld (e.g., letter, memorandum, or computer database); (h) name of privilege(s) claimed; (h) if the document or ESI is designated as attorney work product, identify the proceeding for which the document or ESI was prepared; and (i) the specific discovery request(s) to which the allegedly privileged document, communication or ESI relates. Such privilege log shall be produced contemporaneously with the responding party's answers and responses and will be updated or amended on an ongoing basis over the course of the litigation.

## **12. MISCELLANEOUS**

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material and Redaction Requests. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that requests redaction or seeks to file under seal any Protected Material must comply with Local Rules 140 and 141. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.

## **13. FINAL DISPOSITION**

Within 60 days after the final disposition of this action, as defined in paragraph 4, each

Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

**IT IS SO STIPULATED**, through Counsel of Record:

Dated: March 24, 2022

**KERSHAW, COOK & TALLEY PC**

By: /s/ William A. Kershaw  
William A. Kershaw  
Stuart C. Talley  
Ian J. Barlow  
Jamie M. Powers  
401 Watt Avenue  
Sacramento, California 95864  
Telephone: (916) 779-7000

*Attorneys for Plaintiff and the putative Class*

Dated: March 24, 2022

**MUNGER, TOLLES & OLSON LLP**

By: /s/ Jordan D. Segall  
Martin D. Bern  
Jordan D. Segall  
350 South Grand Avenue, 50th Floor  
Los Angeles, California 90071-3426  
Telephone: (213) 683-9100

**ORDER**

**IT IS SO ORDERED.**

**Dated: March 28, 2022**



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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